Introduction

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This collection of essays profiles courts that adjudicated disputes in Florida during its time as a Spanish province (1513–1763, 1783–1821); as two British colonies (1763–83); as a U.S. territory (1821–45); and as a Confederate state (1861–65). It also examines the use of special jurisdiction tribunals by Florida's military, religious, black, and Indian communities.

Professor Robert M. Jarvis conceived this study due to the paucity of scholarship addressing courts lying outside the normal federal-state paradigm. As readers undoubtedly will agree, the contributors have done their work exceedingly well and have set a high standard for those who decide to undertake similar studies in their own jurisdictions.

Professor M.C. Mirow's lead-off essay points out that while Spain devoted considerable resources to its New World possessions, Florida almost always was considered a region of minor, albeit strategic, outposts. Thus, its system of justice never fully developed into the standard structures of Spanish colonial government. Military governors, occasionally assisted by legally trained advisors known as *asesores*, acted as judges. The question of whether local municipal officers—known as *alcaldes*—served as magistrates remains an open one.

Regardless, there were numerous tribunals in Spanish Florida. Litigants and officials recognized jurisdictional divisions and utilized distinct procedures for different kinds of cases, and criminal and civil matters were handled in ways consistent with Florida's membership in the colonial Spanish world.

In their administration of Florida, Spanish officials generated numerous documents. As Mirow notes, many of these have yet to be explored and remain waiting for researchers in archives in Cuba and Spain (and, increasingly, on the web).

When Great Britain obtained control of Florida in 1763, it divided Florida into two colonies (East and West) with capitals, respectively, at St. Augustine and Pensacola. As Jarvis notes in his chapter, British authorities empowered

Florida's governors to create tribunals styled after those in England, with all such arrangements being forwarded to the Board of Trade in London for approval.

Accordingly, courts of common pleas and general sessions were formed in both colonies, with a right to appeal (in most cases) to the Privy Council. During their short time in Florida, the British also introduced the jury system and the positions of chief justice and attorney general.

By the time the United States purchased Florida from Spain in 1821, the practice of substituting Anglo-American legal traditions for French or Spanish ones had become commonplace. Nevertheless, as Professor Christopher A. Vallandingham reports in his contribution, until Congress enacted legislation establishing the territorial government of Florida the area continued to operate under Spanish legal precedents. The opposition of Anglo settlers, coupled with Governor Andrew Jackson's arbitrary behavior, often caused disorder and uncertainty.

In an effort to place its new acquisition on a more stable legal footing, Congress passed the Florida Territorial Act (1822), specified the duties and responsibilities of local officials, and authorized two judicial districts (Eastern and Western). As time went on, three other districts were added (the Middle in 1824, Southern in 1828, and Apalachicola in 1838).

Superior court judges, selected by the president, served four-year terms. In addition to federal disputes, they heard criminal offenses under territorial law and civil matters in excess of $100. In 1823, Congress passed legislation setting up a court of appeals comprising the superior court judges, who sat together once a year.

Below the superior courts were the county courts. These entities had jurisdiction in matters involving $20-$100; they also handled various administrative tasks in their counties. To cope with this workload, governors were permitted to name up to three judges per county.

Until 1845, when it became elective, the territory's legislative council appointed multiple justices of the peace for each county. These officials adjudicated small disputes and could take evidence for use in trials throughout the territory. As the officials closest to the people, nearly every criminal act or disturbance was brought to them to determine whether the offending individual should be bound over for criminal prosecution. Justices of the peace also had the power to order arrests and set bail.

One of the most vexing problems facing the Florida territory was land ownership. Early on, Congress set up a board of three commissioners to settle Spanish title claims arising before January 24, 1818. This work eventually fell to the superior courts, with many cases being appealed to the U.S. Supreme Court. Because of the absence of documentary records, the complicated na-

ture of the disputes, and accusations of fraud, the adjudication of these disputes took decades.

No less complex was the task of resolving wrecking disputes in the Florida Keys. In 1828, Congress addressed the situation by establishing the Southern Judicial District of Florida and providing it with special admiralty powers, thereby replacing the short-lived wreckers' courts (which, despite their name, were actually arbitration panels).

In his piece, Judge Robert W. Lee recalls that when Florida seceded from the Union and joined the Confederate States of America in 1861, justice functioned in much the same way as it had before, except that the Confederate government created its own federal court system that proved inconsequential. This should come as no surprise, given that the Confederacy was founded on the principle of "states' rights" and therefore was skeptical of federal power. Other difficulties included the lack of a Confederate Supreme Court and the fact that Confederate district courts shared jurisdiction with the state courts.

Having almost nothing to do, Florida's chief Confederate judge resigned his post and joined the army. And with Key West remaining in Union hands throughout the war, the Confederate appointee to its court was unable to take up his post. To fill these breaches, state circuit courts assumed ever more authority, although many of their sessions had to be suspended because of the war. As the conflict escalated, Florida's patrol system (used to control slaves) broke down due to a lack of available white men. As a result, the Florida legislature authorized citizens to hold so-called slave courts as needed.

Since the end of the Civil War, Florida's judiciary has operated along now-standard lines, with state courts handling the bulk of the docket and federal courts hearing claims implicating subjects of national concern. But as part 2 of this book reveals, Florida also has (or has had) courts that exist outside this model. These little-known entities reflect the needs and ethos of the communities that produced them. Being insular in both design and practice, few outsiders know anything about them.

Colonel David J.R. Frakt's essay on military courts advises readers that Florida's 57,000 active duty military personnel are subject to the courts of the armed forces. These tribunals adhere to laws and procedures that differ in key respects from what is found in civilian courts. After a look at Florida's numerous military installations, Frakt briefly summarizes four of the state's most famous military trials: the nineteenth-century Alexander Arbuthnot-Robert Ambrister (espionage) and Samuel Mudd (assassination) cases and the twentieth-century Wallace Wheeler (murder) and Walter Perkins (treason) cases. Frakt then skillfully sketches out the military justice system as practiced under the Uniform

Code of Military Justice. Among its proceedings are summary courts-martial, special courts-martial, general courts-martial, and Article 32 investigations (the equivalent of grand juries). Finally, Frakt contrasts the role of judge advocates with those of prosecutors and public defenders.

Shifting gears, Professor Donna Litman focuses her attention on religious courts in Florida. As she demonstrates, many religions have their own courts, both to settle internal operational disagreements and to adjudicate differences between individual members. Alternate dispute resolution methods also are becoming increasingly popular due to their ability to blend law and faith.

Litman outlines the court procedures of the Roman Catholic and Presbyterian churches, both of which rely on hierarchical governance. As in other jurisdictions, Florida's Catholic courts adhere to the international Code of Canon Law, handle a wide variety of cases (but most often focus on marital matters), and have an appellate process. The Presbyterian judiciary is governed by the national Book of Order, which establishes permanent judicial commissions and provides detailed rules for the trial and appeal of disciplinary and remedial cases. While independent, Jewish courts address both religious issues (such as conversion, marriage, and divorce) and business matters and can be convened in the same manner as Florida arbitration panels.

As a general rule, Florida's secular courts lack jurisdiction over ecclesiastic disputes (due to the First Amendment). Occasionally, however, they will hear such controversies. When they do, they rely on neutral principles of law. As Litman points out, this often occurs in cases involving the property rights of a locally governed congregation, such as a Baptist church.

In his chapter, Professor Ernesto A. Longa discusses Miami's Negro Municipal Court ("NMC"), the only black court to ever exist in the United States. The City of Miami created the NMC in 1950 at the urging of black businessmen and professionals, who felt that the existing courts were failing to pay enough attention to the problem of black-on-black crime. These proponents also believed that black defendants were not being accorded the same respect as white defendants.

The NMC heard cases involving black defendants, arrested by black police officers in black neighborhoods, accused of committing crimes against other blacks. White defendants, as well as cases involving criminal acts by blacks against whites, were excluded from the NMC's jurisdiction.

To preside over this new court, Miami tapped Lawson E. Thomas, one of Florida's most respected black lawyers. A native Floridian, Thomas had earned a law degree from the University of Michigan in 1923 and then spent years practicing in Miami's white courts. His reputation, as well as his calm demeanor,

elicited respect from everyone who came before him, including white lawyers who found themselves handling an NMC case.

From the beginning, the NAACP and the national black press railed against the NMC. Others, however, argued it was the one forum in which blacks were assured of receiving justice; they also held the NMC up as proof that the black community could govern itself. By 1960, however, progressive forces in Miami were actively campaigning to end all forms of segregation. In their view, the NMC was just another example of the South's "Jim Crow" mentality.

The dawning of the national civil rights movement, together with the loss of its black judge, meant that the NMC's days were numbered. The end finally came in 1963, when Miami's city manager ordered all municipal facilities to be integrated. Today, following a meticulous renovation, the NMC's building has been turned into a museum.

Professor Tonya Kowalski's concluding piece on Indian courts, co-authored with Jarvis, describes the courts run by the Miccosukee Indian tribe of Florida and the Seminole tribe of Florida. The modern-day Miccosukees and Seminoles are the descendants of those Florida Indians who refused to obey President Andrew Jackson's order to relocate to Oklahoma. Although small in size, the Miccosukees (600 members) and Seminoles (4,000 members) have in recent years played an outsized role in Florida due to their highly lucrative gambling enterprises.

In accordance with their respective histories and points of views, the Miccosukee and Seminole courts could not be more different. Whereas the Miccosukees run their court (established in 1981) in relative secrecy and rely heavily on unwritten tribal customary law, the Seminoles have gone to great lengths to be transparent and have consciously modeled their court (opened in 2015) after Florida's courts.

At the same time, the Miccosukees and Seminoles increasingly have found themselves being sued in federal and state courts due to their gambling enterprises. Quite often they have been able to get such lawsuits dismissed on the basis of tribal sovereign immunity.

While the first four essays in this book deepen our understanding of Florida's early legal evolution, those in the second half demonstrate that one of the consequences of Florida's cultural diversity has been a perceived inability of the mainstream courts to provide justice to all citizens. By bringing these stories to light and collecting them in a single place, the editor and his fellow contributors have provided an invaluable service to everyone who works in, studies, or simply wants to better understand Florida's legal system.